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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,823	09/22/2006	Colin Brown	102790-210 (30088 US)	4910
27380 7590 12/24/2008 NORRIS, MCLAUGHLIN & MARCUS 875 THIRD AVE 18TH FLOOR NEW YORK, NY 10022				
EXAMINER CONLEY, SEAN EVERETT				
ART UNIT		PAPER NUMBER		
1797				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/572,823

Applicant(s)

BROWN ET AL.

Examiner

SEAN E. CONLEY

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6 and 7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6 and 7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 16, 2008 has been entered. Claims 1-4 and 6-7 remain pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-4 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, claim 1 recites the term "substantially completely" in line 10. The term renders the claim indefinite because the Examiner cannot determine the scope of the claim. It is unclear if the claimed "upper orifice" is completely blocked or only substantially blocked. The upper orifice cannot be both at the same time as recited by the term "substantially completely".

Claims 2-4 and 6 are rejected for the same reason applied dot claim 1 above, since they depended from and include all of the limitations of claim 1.

Claim Rejections - 35 USC § 102

4. Claims 1-3 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Dimacopoulos (U.S. Patent No. 4,173,604).

Regarding claims 1 and 7, Dimacopoulos discloses a method of disseminating into an atmosphere a volatile liquid using a device. The device (10) is adapted to disseminate vaporous material into an atmosphere and comprises the following elements: (a) a housing (12) comprising a plurality of parallel slots (16) serving as an exit port (see figure 1); (b) an electrically-driven fan (20) having an axis arranged perpendicularly in the housing and having fan blades arranged perpendicular to the axis (see figure 2), so that the fan blows a current of air horizontally across the interior of the housing and through exit ports (16) into the atmosphere (see figures 1-2; see col. 4, lines 35-60); (c) a reservoir (28) of volatile liquid (48) for evaporation into the atmosphere, the reservoir (28) having an upper orifice substantially completely blocked by an essentially planar, essentially horizontal evaporation surface (surface of absorbent member 38) extending across substantially the entire interior of the housing, the reservoir (28) and the housing (12) cooperating such that the current of air blows across the evaporation surface (surface of absorbent member 38) as it moves towards the exit port (16 (see figures 4-5; see col. 5, lines 10- 55); and (d) a wick (liquid transport means (50)) disposed centrally in the reservoir and extending from the bottom

of the reservoir to the evaporation surface for transferring liquid from the reservoir (28) to the evaporation surface (see figures 4-5; see col. 5, line 10 to col. 6, line 65).

Regarding claim 2, Dimacopoulos discloses an evaporation surface (surface of member 38 completely saturated with the vapor generating liquid 48) that is located beneath the flow of the air current which is generated by fan (20) (see col. 6, lines 49-68; see figures 2, 4 and 5).

Regarding claim 3, Dimacopoulos discloses an evaporation surface (capillary action membrane 38) which is formed from a non-woven fabric. Since the evaporation surface is made of a non-woven fabric, it inherently contains a series of very small wavelike surface contours which are also known as undulations (see col. 5, lines 43-45).

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dimacopoulos as applied to claim 1 above, and further in view of Purzycki (U.S. Patent No. 4,913,350)

Dimacopoulos discloses the claimed invention but is silent with regards to at least one flat vane raised on the planar surface essentially perpendicular to the surface.

Purzycki discloses an improved external capillary member for releasing a fragrance (see figures 1-4; see col. 2, lines 34-58; see columns 3-4). The surface of the capillary member has been provided with capillary cavities as illustrated in figures 1-4. The resulting fins or vanes formed on the capillary member results in a fragrance being released uniformly and linearly in to the air, without distortion of the odor character and without change in the rate of delivery (see col. 2, lines 34-58 and col. 1, lines 16-34).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Dimacopoulos and incorporate the capillary design of the fins exemplified in figure 3a of Purzycki onto the surface of the capillary action membrane (38) in order to release the fragrance uniformly and linearly in to the air, without distortion of the odor character and without change in the rate of delivery. The resulting capillary action membrane (38) would have a vane that extends across the surface in the direction of at least a portion of the air flow (due to the shape of the housing 12) and is capable of being adapted to be rotated (the membrane (38) has a circular circumference) such that at least one vane would be positioned parallel to a portion of the airflow, thus being able to block the flow.

Response to Arguments

7. Applicant's arguments filed December 16, 2008 have been fully considered but they are not persuasive.

Claim rejections under 35 USC 102

The Applicant argues that Dimacopoulos does not anticipate the amended claims because the claimed arrangement of the fan in the housing with respect to the evaporation surface is entirely different than the arrangement in the invention of Dimacopoulos. Specifically, the Applicant states that *"In contrast with the presently claimed invention, Dimacopoulos does not have an electrically driven fan arranged 'an electrically-driven fan having an axis arranged perpendicularly in the housing and having blades arranged perpendicular to the axis such that the fan blows a current of air horizontally across the interior of the housing and through the exit port', which comprise 'a plurality of parallel slots' in the housing, as Applicant claims and as is shown in Figs. 1:3 and described in the specification."*

The Examiner respectfully disagrees. The arrangement of the fan in Dimacopoulos does meet the claimed limitations. The fan (20) has a vertical axis that is arranged perpendicularly in the housing (perpendicular to the bottom or top walls) and further has blades arranged perpendicular to the axis (see figure). At least a portion of the air current blows horizontally across the interior of the housing and out of the exit ports due to the rectangular shape and location of the outlet ports of the housing. Therefore, the claimed arrangement is not entirely different from the invention of Dimacopoulos as suggested by the Applicant.

It should be noted that the claims do not specify what the terms "arranged perpendicularly" or "arranged perpendicular" are relative to in the housing. Only reciting something that is "arranged perpendicularly" does not indicate any specific position or orientation without stating what feature it is relative to in the housing. For

example, "the axis of rotation of the fan is arranged perpendicular to the evaporation surface."

The Applicant further states that the claims include *"an electrically driven fan having an axis arranged perpendicularly in the housing and having blades arranged perpendicular to the axis and being mounted perpendicular and above the planar evaporation surface"*. Again, the Applicant states that this arrangement is entirely different than the arrangement taught by Dimacopoulos.

The Examiner disagrees. First, the argument is not commensurate in scope with the claims. The claims do not require "being mounted perpendicular and above". The claim only states that the fan is "mounted above the planar surface" (see claim 7). However, as stated above, the term "perpendicular" has not been indicated as to what it is perpendicular to. Dimacopoulos does have a blower mounted such that it blows directly at the membrane (38) as stated by the Applicant. However, this configuration still anticipates the currently amended claims since the Applicant has not specified how the components are arranged relative to each other inside the housing.

Therefore, for the reasons stated above, claims 1-3 and 7 remain rejected as being anticipated by Dimacopoulos.

Claim rejections under 35 USC 103

Regarding the rejection of claims 4 and 6, the applicant argues that combining the capillary members of Purzycki with Dimacopoulos would not be feasible because the capillary members would not be stable and they would be too long and interfere with

the fan blades. The examiner disagrees. The arguments are unsubstantiated and not based on fact. One of ordinary skill in the art would recognize whether or not the capillary members of Purzycki need to be resized or provided with additional support, but only if needed. Furthermore, the applicant argues that even if combined, the combination would not result in the features recited in claim 4.

The Examiner respectfully disagrees. The capillary members of Purzycki contain at least one flat vane and further, the claim does not require the entire capillary member to be a flat vane. At least one vane is perpendicular to the surface in the direction of air flow because at least a portion of the air flow in the device of Dimacopoulos is reflected off from the walls of the housing 12 before exiting, thus resulting in an air flow perpendicular to the flat vanes of the capillary member. The claims do not require that the flat vane be mounted perpendicular to the entire flow of air from the fan. Furthermore, as evidenced by capillary member (3b), the flat vanes are raised on a planar surface (for example, if you cut off the vanes you are left with a planar surface - see figure 1 and figure 3b). Finally, the vanes of the capillary members disclosed by Purzycki are capable of being rotated from a position parallel to the gas flow to a flow blocking position transverse to the flow because, as stated above, at least a portion of the air is reflected off of the walls of the housing 12 prior to exiting in the device of Dimacopoulos. Therefore, the combination is capable of functioning as claimed. Claims 4 and 6 remain rejected over the combination of Dimacopoulos and Purzycki.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean E. Conley whose telephone number is 571-272-8414. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

December 19, 2008

/Sean E Conley/
Primary Examiner, Art Unit 1797